

General Information Letter: A relationship characterized as employer-employee for federal income tax withholding purposes is an employer-employee relationship for Illinois income tax withholding purposes.

April 23, 1999

Dear:

This is a follow-up to our telephone conversation this morning in which you requested a letter ruling. The nature of your request requires that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your request, you stated that actors and extras employed in film productions are characterized as employees for purposes of withholding of income taxes under the Internal Revenue Code. You asked whether such persons would also be subject to withholding of Illinois Income Tax on compensation for services performed in Illinois.

Response

Section 701(a) of the Illinois Income Tax Act (35 ILCS 5/101 *et seq.*) provides:

Every employer maintaining an office or transacting business within this State and required under the provisions of the Internal Revenue Code to withhold a tax on:

(1) compensation paid in this State (as determined under Section 304 (a) (2) (B)) to an individual; or

(2) payments described in subsection (b) shall deduct and withhold from such compensation for each payroll period (as defined in Section 3401 of the Internal Revenue Code) an amount equal to the amount by which such individual's compensation exceeds the proportionate part of this withholding exemption (computed as provided in Section 702) attributable to the payroll period for which such compensation is payable multiplied by a percentage equal to the percentage tax rate for individuals provided in subsection (b) of Section 201.

(b) Payment to Residents.

Any payment (including compensation) to a resident by a payor maintaining an office or transacting business within this State and on which withholding of tax is required under the provisions of the Internal Revenue Code shall be deemed to be compensation paid in this State by an employer to an employee for the purposes of Article 7 and Section 601 (b) (1) to the extent such payment is included in the recipient's base income and not subjected to withholding by another state

The terms "employer" and "employee" are not defined in the Illinois Income Tax Act. However, Section 102 of the Illinois Income Tax Act states:

Except as otherwise expressly provided or clearly appearing from the context, any term used in this Act shall have the same meaning as

when used in a comparable context in the United States Internal Revenue Code of 1954 or any successor law or laws relating to federal income taxes and other provisions of the statutes of the United States relating to federal income taxes as such Code, laws and statutes are in effect for the taxable year.

Accordingly, any person characterized as an employee of a specific employer for federal income tax withholding purposes will be an employee of that employer for purposes of withholding Illinois Income Tax.

The term "compensation" is defined in Section 1501(a)(3) of the Illinois Income Tax Act to mean "wages, salaries, commissions and any other form of remuneration paid to employees for personal services." Section 304(b)(2)(B) provides that compensation is paid in Illinois, and therefore is subject to withholding, if:

- (i) The individual's service is performed entirely within this State;

- (ii) The individual's service is performed both within and without this State, but the service performed without this State is incidental to the individual's service performed within this State; or

- (iii) Some of the service is performed within this State and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

Any person who is characterized as an employer of an employee for federal income tax withholding purposes is required to withhold Illinois Income Tax from payments to that employee if the employee's services are performed under any of these criteria.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Paul S. Caselton
Associate Chief Counsel -- Income Tax